

**PINELANDS COMMISSION**

**Pinelands Comprehensive Management Plan**

**Map Status; Height Limitations; Pinelands Management Areas; Parkway Overlay District**

**Proposed Amendments: N.J.A.C. 7:50-5.3, 5.4, 5.11, 5.12 and 5.13**

**Proposed New Rule: N.J.A.C. 7:50-5.35**

Authorized By:

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New Jersey Pinelands Commission,  
John C. Stokes, Executive Director

Authority: N.J.S.A. 13:18A-6j

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number:

A **public hearing** concerning this proposal will be held on:

February 15, 2006 at 7:00 P.M.  
Richard J. Sullivan Center  
15C Springfield Road  
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile or e-mail by March 4, 2006 to:

Susan R. Grogan, P.P., AICP  
Chief Planner  
Pinelands Commission  
P.O. Box 7  
New Lisbon, NJ 08064  
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The name and mailing address of the commenter must be submitted with all public comments.

The agency proposal follows:

### **Summary**

The New Jersey Pinelands Commission proposes to amend subchapter 5, Minimum Standards for Land Uses and Intensities, of the Pinelands Comprehensive Management Plan (CMP). The Pinelands CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. Since that time, the CMP has been amended a number of times, most recently in June of 2005 through a set of amendments which redesignated the Oyster Creek and Waretown Creek watersheds in Ocean and Lacey Townships from a Pinelands Rural Development Area to a Pinelands Forest Area, adjusted Pinelands management area boundaries to reflect a settlement agreement involving lands in Manchester Township, updated the threatened and endangered plant list contained in the CMP and established a new pilot program for consumer electronics recycling facilities (see 37 N.J.R. 2013(b)).

Subchapter 5, Minimum Standards for Land Uses and Intensities, of the Pinelands Comprehensive Management Plan establishes requirements which govern the type, location and intensity of land uses permitted throughout the Pinelands. Part II of subchapter 5 establishes nine land use management areas and sets forth the goals, objectives and permitted uses for each. The boundaries of these management areas are provided on the Land Capability Map adopted as part of the CMP at N.J.A.C. 7:50-5.3(a)24.

The above-described management area designations provide a sound framework for the management of the Pinelands. However, they do not easily accommodate or recognize special resources or existing uses which may be contained within one or more management areas. Linear development in the form of a limited access highway at or near the edge of the Pinelands is perhaps the most obvious existing use facing this situation. Because the permitted use standards set forth in the CMP for one management area may be significantly different than those of another, a limited access highway at or near the edge of the Pinelands which traverses multiple management areas may be viewed as a permitted use in some areas and as a nonconforming use in others. Nonconforming uses in the Pinelands Area are generally subject to N.J.A.C. 7:50-5.2 which permits up to a 50 percent expansion of the floor area, area of the use or capacity of the use, whichever is applicable, on January 14, 1981 (the effective date of the CMP). Thus, the Commission has found itself in the position of having to determine whether the proposed expansion of an existing limited access highway at or near the edge of the Pinelands will comply with N.J.A.C. 7:50-5.2 for those portions of a project in the Preservation Area District or Forest Area but not those portions in other more growth-oriented management areas. This has become a cumbersome task which clearly demonstrates the need for a more logical and consistent mechanism to recognize and regulate these uses.

Nowhere has the problem been more evident than with the Garden State Parkway which forms the eastern boundary of the Pinelands Area in the north and the Pinelands National Reserve in the south. The Parkway is a limited access highway established prior to the adoption of the CMP. More specifically, the Parkway was constructed by the State in the early to mid-1950's and is presently

owned and operated by the New Jersey Turnpike Authority. It traverses multiple Pinelands management areas, serving as a major tourism roadway, the only north-south evacuation route in the southern New Jersey region, a commuter roadway and an interstate travel roadway. The Parkway has and continues to be used for its originally intended transportation purposes. The Commission believes it is appropriate for the CMP to expressly recognize this existing and important transportation corridor by developing a land use policy which may be applied consistently along the entire length of the Parkway in the Pinelands.

Rather than create a new Pinelands management area to recognize the Garden State Parkway, the Commission is instead proposing to establish an overlay district. The designation of overlay districts is a frequently used land use planning tool employed by municipalities to identify special resources, development areas or existing uses which warrant additional protection and/or more targeted standards. On the municipal level, overlay districts are most often superimposed on existing zoning districts. In other words, lands within an overlay district generally retain their underlying zoning designations. The amendments and new rule being proposed by the Commission take these well-established overlay district provisions and apply them on a regional basis to the Pinelands.

N.J.A.C. 7:50-5.11(c) is proposed to indicate the Commission's general ability to establish overlay districts in the Pinelands as a means of recognizing and addressing special resources and existing uses. Lands within any overlay district retain their underlying Pinelands management area designations. As is indicated in proposed N.J.A.C. 7:50-5.11(c), the boundaries of any overlay district established by the Commission will be depicted on the Land Capability Map. Where appropriate, municipalities will have the ability to refine or adjust the boundaries of

overlay districts, just as they do with Pinelands management area boundaries. The establishment of any new overlay district will require the Commission to undertake the formal rulemaking process.

N.J.A.C. 7:50-5.12(a) lists the nine Pinelands management areas established by the CMP. A new subsection (b) is proposed to similarly list the overlay districts established by the CMP. As is indicated in N.J.A.C. 7:50-5.12(b)1, the Commission is now proposing to authorize one specific overlay district, referred to as the Parkway Overlay District. This new overlay district, the goals and objectives for which are provided at proposed N.J.A.C. 7:50-5.13(i), encompasses the Garden State Parkway, a limited access highway established prior to the adoption of the CMP.

The boundaries of the Parkway Overlay District, reflected on an amended Land Capability Map proposed for adoption at N.J.A.C. 7:50-5.3(a)24, have been drawn to coincide with the existing right of way of the Garden State Parkway in the Pinelands. This right of way ranges in width from 300 to 700 feet and contains approximately 5,186 acres. The Parkway Overlay District includes lands in the Preservation Area District, Forest Area, Rural Development Area, Regional Growth Area, Military and Federal Installation Area and two Pinelands Villages.

The majority of the new overlay district (4,070 acres or 78 percent) is located within the State-designated Pinelands Area. A smaller portion (1,116 acres or 22 percent) is located in that part of the Pinelands National Reserve outside the State-designated Pinelands Area. The Commission does not exercise direct regulatory jurisdiction to implement the policies of the CMP outside the State-designated Pinelands Area. However, the CMP does include land use and development policies governing the future use and development of lands within the entire

Pinelands National Reserve Area, as is required by the Pinelands Protection Act which designates the Commission as the “planning entity” for the Pinelands National Reserve. In addition, sections 502(f)4 and 8 of the National Parks and Recreation Act of 1978, Pub.L. 95-625 (16 U.S.C. Section 471i(f)4 and 8) charge the Commission with the responsibility of preparing a management plan that details the ways in which local, State and Federal programs and policies may best be coordinated to promote the goals and policies of the management plan and assures that local government implementation of the management plan will ensure “the continued, uniform and consistent protection of” the entire Pinelands National Reserve. In order to meet this directive, Pinelands management areas were established for that portion of the Pinelands National Reserve located outside the State-designated Pinelands Area when the CMP was adopted in 1980. The boundaries of these management areas are depicted on the Land Capability Map adopted at N.J.A.C. 7:50-5.3(a)24 and would not be changed by the amendments and new rule now being proposed. Instead, the Parkway Overlay District would be established to encompass the entirety of the Parkway in the Pinelands National Reserve, providing consistent treatment along the entire length of the existing roadway. Pursuant to the Pinelands Protection Act and consistent with the Commission’s Memorandum of Agreement with the Department of Environmental Protection, the Department will continue to refer applications for development within the so-called “overlap area” to the Commission for review and comment as to the consistency of the applications with the CMP. The Commission, which serves in an advisory role to the Department in these matters, will review any such applications involving the Parkway in accordance with the standards of the new Parkway Overlay District.

Proposed N.J.A.C. 7:50-5.35 sets forth the minimum standards governing the distribution and intensity of development and land use in the new Parkway Overlay District. Permitted uses in the Parkway Overlay District, listed at proposed N.J.A.C. 7:50-5.35(a), are primarily limited to the roadways, bridges and outlying and accessory facilities associated with operation and maintenance of the highway. Accessory facilities could include, for example, park and ride facilities or toll collector houses. Public service infrastructure, both underground and above-ground, is also permitted, including communications and data transfer utilities and Intelligent Transportation Systems (variable message signs, cameras, highway advisory radio, etc). Local communications facilities (telecommunication towers) are also permitted. Pursuant to proposed N.J.A.C. 7:50-5.35(a)2, existing interchanges within the Parkway Overlay District may be improved and expanded; however, new interchanges are not permitted. It is important to note that the above-described uses *and only those uses* will be permitted in the new overlay district. Commercial uses, hotels, office facilities, residential uses and the like that are not clearly accessory to and associated with operation of the Parkway will not be permitted. This will be the case regardless of the future ownership of the Parkway or any portion thereof, including rest areas.

N.J.A.C. 7:50-5.35(a) further provides that all development within the Parkway Overlay District is required to occur within the existing highway right of way. Local communications facilities in the new overlay district, while proposed for exemption from the normal 35-foot height limitation in the Pinelands pursuant to N.J.A.C. 7:50-5.4(a), are further subject to the standards of N.J.A.C. 7:50-5.4(c) which require that the visual impacts of such towers on various Pinelands resources and existing uses be minimized. All of the other permitted uses in the

Parkway Overlay District would be subject to proposed N.J.A.C. 7:50-5.35(b) which requires that they induce no changes in the location, pattern or intensity of land use which would be inconsistent with the Pinelands land use program. This requirement addresses what are commonly referred to as “secondary impacts” which can and do result from roadway improvements, particularly those involving improvements to or expansions of interchanges.

It is important to note that proposed N.J.A.C. 7:50-5.35(b) would not preclude development in the Parkway Overlay District from occurring simply because such development might have an impact on land use outside the overlay district. Secondary impacts are not necessarily undesirable. It is only those impacts which are inconsistent with the Pinelands land use program which would be at issue. In this case, the Pinelands land use program primarily means the management area designations which are established in the CMP, implemented by Pinelands municipalities through their master plan and zoning processes and geographically depicted on the Land Capability Map. As an example, the improvement of an existing interchange might significantly increase the accessibility of and therefore development pressure on the surrounding area. Likewise, the addition of a third lane to the Parkway would be expected to result in the accommodation of a higher volume of traffic on the Parkway itself and might significantly increase traffic demand and volume on selected feeder roads to the Parkway. If the affected area or feeder roads are located in a Regional Growth Area or Pinelands Village, there would be no issue because the CMP encourages growth in these areas. If, however, the area or road is located in the Preservation Area District, Forest Area or Rural Development Area, the induced changes in location, pattern or intensity of development might well be inconsistent with the



Pinelands land use program as these are management areas in which the CMP does not permit or encourage intensive development. Obviously, there would be no issue if the lands in question are in public ownership or otherwise permanently protected. This is likely to be the case in many areas. In others, steps may need to be taken to avoid potentially negative land use implications, perhaps through the purchase and protection of lands.

The Commission understands that the New Jersey Turnpike Authority will not have control over all secondary impacts which may result from development in the Parkway Overlay District. The Commission further understands that the New Jersey Turnpike Authority believes it does not have the authority to purchase and protect lands outside the Parkway right of way. However, the necessary protection of lands could certainly be accomplished in cooperation with a Pinelands county, municipality, nonprofit organization or some combination thereof. The incorporation of the secondary impact standard in proposed N.J.A.C. 7:50-5.35(b) is perhaps the most critical part of the new land use policy which has been developed for the Parkway.

Finally, proposed N.J.A.C. 7:50-5.35(c) is being added to clarify that in cases of conflict between the standards provided in N.J.A.C. 7:50-5.35 for the overlay district and those elsewhere in subchapter 5 for the underlying management areas, it is the provisions of the overlay district which prevail. In other words, it is proposed N.J.A.C. 7:50-5.35(a) and (b) which will govern what may ultimately be developed in the Parkway Overlay District, not the lists of permitted uses set forth elsewhere in N.J.A.C. 7:50-5, Part III, of the CMP for the individual Pinelands management areas which fall within the overlay district. This will allow highway-related improvements, public service infrastructure and local communications

facilities to be considered as permitted uses in those portions of the Parkway right of way which are located in the Preservation Area District or Forest Area. Of equal importance, development in those portions of the Parkway right of way which are located in a Pinelands Village, Rural Development Area or Regional Growth Area will be limited to highway and utility-related uses. N.J.A.C. 7:50-5.35(c) therefore serves two important purposes. It supports the continued use and development of the Parkway and also ensures that only those uses specified in N.J.A.C. 7:50-5.35(a) will be allowed to be developed within the Parkway Overlay District.

### **Social Impact**

No adverse social impact is anticipated as a consequence of the adoption of the proposed amendments and new rule. On the contrary, social impacts are expected to be positive.

The proposed amendments and new rule are designed to allow for continued operation and improvement of the Garden State Parkway within the Pinelands and, as such, should have a positive impact on the citizens of New Jersey, the New Jersey Turnpike Authority and the Commission in general. Ensuring the preservation and protection of the Pinelands environment while allowing for necessary and fundamental land uses has been the Commission's mandate since the enactment of the Pinelands Protection Act in 1979. The proposed amendments and new rule will further that mandate. The public will be positively affected by the proposed amendments and new rule because the Commission will be able to continue to preserve and protect the Pinelands while allowing for continued maintenance, improvement and expansion of the Garden State Parkway in a safe

and efficient manner for the benefit of all of the citizens and businesses of the State who are served by that vital transportation corridor.

The proposed amendments and new rule are designed to provide one set of land use regulations which will govern Parkway development for its entire length in the Pinelands. This should make the review of applications for Parkway-related development much less awkward and cumbersome as there will no longer be a need to apply vastly different management area standards and permitted use requirements to different sections of the Parkway.

### **Economic Impact**

Adoption of the proposed amendments and new rule will, on a regional basis, have a minimal economic impact. To the extent that the proposed amendments and new rule facilitate the continued improvement and expansion of the Garden State Parkway, thereby ensuring the safe and efficient movement of persons and goods through the State, a positive economic impact on both the State and regional economies may result.

It is possible that, as a result of the standard proposed at N.J.A.C. 7:50-5.35(b) concerning land use impacts resulting from development in the Parkway Overlay District, there may be a need to purchase and permanently protect lands which might otherwise be impacted by the proposed development in a manner inconsistent with the Pinelands land use program. The Commission believes the potential for such land use impacts is limited, based on the information provided to date by the New Jersey Turnpike Authority concerning its future plans for expansion and improvement of the Parkway. Nevertheless, the cost of any necessary land protection measures will have economic implications for the New

Jersey Turnpike Authority and any municipal, county or other partners it may need to engage in an effort to ensure that adverse land use impacts do not result.

### **Environmental Impact**

The environmental impact of the proposed amendments and new rule is expected to be minimal. All development within the new Parkway Overlay District will remain subject to the minimum environmental standards set forth in N.J.A.C. 7:50-6 of the CMP. In addition, proposed N.J.A.C. 7:50-5.35(b) will ensure that development within the Parkway Overlay District does not induce changes in land use which would be inconsistent with the Pinelands land use program, as expressed through the management area designations which have been established in the CMP and implemented in municipal master plans and ordinances. Applications to the Commission will also continue to be required for development within the overlay district pursuant to N.J.A.C. 7:50-4. The proposed amendments and new rule simply relieve an applicant for development within the Parkway right of way from having to deal with multiple Pinelands management area designations and their respective permitted use limitations as they apply to various sections of the Parkway.

### **Federal Standards Statement**

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments and new rule are designed to meet those goals by recognizing an important existing use in the Pinelands (the Garden State Parkway) in a manner which ensures that the Pinelands land use program will not be adversely affected.

There are no other Federal requirements which apply to the subject matter of these amendments and new rule.

#### **Jobs Impact**

It is not anticipated that jobs will be directly generated or lost due to the proposed amendments and new rule.

#### **Agriculture Industry Impact**

The proposed amendments and new rule are expected to have no impact on the agriculture industry in the Pinelands.

#### **Regulatory Flexibility Statement**

Most businesses in the Pinelands may be characterized as small in size and employment compared to the remainder of New Jersey. However, the proposed amendments and new rule do not differentiate by size of business and thus impact on all businesses equally.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Commission has evaluated the proposed amendments which are the subject of this rulemaking effort to determine the nature and extent of their impact on smart growth and implementation of the State Plan.

The proposed amendments and new rule are designed to recognize an existing public transportation corridor and allow for its continued use and expansion in a manner which is consistent with the CMP. Development within the newly established Parkway Overlay District will be appropriately limited to highway-related improvements, public service infrastructure and local communications facilities. New interchanges will not be permitted. Importantly, any development in the overlay district which would induce changes in the location, pattern or intensity of land use that would be inconsistent with the CMP will not be permitted. The proposed amendments and new rule therefore give the Commission an enhanced ability to regulate and minimize the impacts of highway expansion and improvement on the conservation-oriented areas of the Pinelands. In addition, by establishing a land use policy which can be consistently applied to the entire length of the Parkway within the Pinelands, the proposed amendments and new rule will provide for the efficient use of an existing public facility, an important component of any smart growth strategy.

No other smart growth impacts are anticipated from the proposed amendments and new rule.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

**Full text** of the proposal follows (additions indicated with underlines thus; deletions indicated in brackets [thus]):

#### **7:50-5.3 Map Status**

- (a) The following maps, the originals of which are maintained at the offices of the Commission, are hereby designated and established as a part of this Plan and shall be as much a part of this Plan as if they were set out in full in this Plan:
  - 1.-23. (No change.)
  - 24. Land Capability, Plate 28, as amended as of [June 6, 2005] the effective date of these rules;
  - 25.-26. (No change.)

#### **7:50-5.4 Height limitations**

- (a) In all Pinelands Management Areas other than Regional Growth Areas and Pinelands Towns and in the Parkway Overlay District, no structure, including radio and television transmission and other communication facilities which are not accessory to an otherwise permitted use, shall exceed a height of 35 feet, except as provided in (b) below.
- (b)-(d) (No change.)

**7:50-5.11 Purpose**

(a)-(b) (No change.)

(c) In order to ensure that special resources and existing uses in the Pinelands are recognized and addressed in an appropriate manner which ensures that the minimum standards of this Plan are met, the Commission hereby finds that it is necessary to establish overlay districts governing such special resources and existing uses. The boundaries of the overlay districts are set forth on the Land Capability Map identified in N.J.A.C. 7:50-5.3. Lands within these overlay districts retain their Pinelands management area designations. The overlay district designation provides a mechanism for the imposition of more targeted standards governing the distribution and intensity of development within specific geographic portions of the various Pinelands management areas in order to accomplish important land use objectives. The boundaries of the overlay districts may be refined and/or adjusted through the Commission's certification of municipal master plans and land use ordinances pursuant to N.J.A.C. 7:50-3, provided that the Commission determines that the goals and objectives of this Plan will be implemented by the proposed municipal master plan or land use ordinance under the municipal plan certification procedures of N.J.A.C. 7:50-3.

**7:50-5.12 Pinelands Management Areas and Overlay Districts established**

(a) (No change.)

(b) The following Pinelands Overlay Districts are hereby established:

1. Parkway Overlay District.



**7:50-5.13 Goals and objectives of Pinelands Management Areas and Overlay Districts**

(a)-(h) (No change.)

- (i) The Parkway Overlay District consists of a limited access highway located at or near the edge of the Pinelands and constitutes an existing transportation corridor established prior to the adoption of this Plan. The boundaries of the Parkway Overlay District coincide with the existing highway right of way as of (the effective date of these amendments). This disturbed area is a specially managed area of the State which is appropriate for continued use as a roadway and for development of other important public service infrastructure. The Parkway Overlay District includes lands located in the Preservation Area District, Forest Area, Rural Development Area, Regional Growth Area, Military and Federal Installation Area and two Pinelands Villages.

**7:50-5.35 Minimum standards governing the distribution and intensity of development and land use in the Parkway Overlay District**

- (a) The following uses shall be permitted in the Parkway Overlay District, provided they are located within the existing highway right of way:
1. Construction, improvement, expansion, repair, reconstruction and maintenance of roadways, bridges and outlying and accessory facilities associated with operation and maintenance of the highway;
  2. Improvement, expansion, repair, reconstruction and maintenance of existing interchanges;
  3. Construction, improvement, expansion, repair, reconstruction and maintenance of public service infrastructure, both underground and

above-ground, including communications and data transfer utilities and Intelligent Transportation Systems; and

4. Local communications facilities, provided that the standards set forth in N.J.A.C. 7:50-5.4(c)4ii through v are met.

(b) The uses listed in (a)1 through 3 above shall be permitted provided they will not induce changes in the location, pattern or intensity of land use which would be inconsistent with the Pinelands land use program as implemented through the Commission's certification, pursuant to N.J.A.C. 7:50-3, of the master plans and land use ordinances of Pinelands municipalities.

(c) In order to support the continued use and development of the Garden State Parkway and to ensure that only those uses specified in (a) above are allowed to be developed within the Parkway Overlay District, the provisions of (a) and (b) above shall control in the event of a conflict with any other standards set forth elsewhere in this Part for the underlying Pinelands management area designations.